



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0228; FRL-9711-1]

Approval and Promulgation of State Implementation Plans; Hawaii; Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part a State Implementation Plan (SIP) revision submitted by the state of Hawaii pursuant to the requirements of Section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 and 2006 NAAQS for fine particulate matter (PM_{2.5}).

DATES: Effective Date: This final rule is effective on [insert date 60 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action, identified by Docket ID Number EPA-R09-OAR-2012-0228. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material),

and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Dawn Richmond, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3207, *richmond.dawn@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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I. Background

On April 12, 2012 (77 FR 21913), EPA proposed to approve in part and disapprove in part a SIP revision submitted by Hawaii Department of Health (HDOH) on December 14, 2011 to address the infrastructure requirements of CAA section 110(a)(2) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 NAAQS for PM_{2.5} (“2011 Hawaii Infrastructure SIP”). The rationale supporting EPA's action, including the scope of infrastructure SIPs in general, is explained in that Notice of Proposed Rulemaking (NPR) and the associated technical support

document (TSD) and will not be restated here. The TSD is available online at <http://www.regulations.gov>, Docket ID number EPA–R09–OAR–2012–0228. No public comments were received on the NPR.

II. Final Action

EPA is approving in part and disapproving in part the 2011 Hawaii Infrastructure SIP.

EPA is approving the 2011 Hawaii Infrastructure SIP with respect to the following requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (minor New Source Review (NSR) program only).
- Section 110(a)(2)(D)(i)(I): Interstate transport (significant contribution and interference with maintenance).
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Public notification.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

In addition, we are approving into the SIP as non-regulatory materials the statutory provisions that HDOH included as part of the 2011 Hawaii Infrastructure SIP.

We are disapproving the 2011 Hawaii Infrastructure SIP with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (permit program as required in part C of title I of the Act).
- Section 110(a)(2)(D)(i)(II): Interstate transport - prevention of significant deterioration and visibility protection.
- Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(J) (in part): Consultation with government officials and Prevention of Significant Deterioration (PSD).

As explained in the NPR and TSD, our disapproval of these elements and sub-elements is compelled by the absence of an approvable SIP revision from Hawaii that meets the PSD requirements of sections 160 through 165 of the CAA.¹ In addition, our disapproval of Section 110(a)(2)(D)(i)(II) is compelled by the lack of approvable SIP revisions to address reasonably attributable visibility impairment (RAVI) and regional haze affecting mandatory Class I areas.² Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock.

¹ See 40 CFR 52.632.

² See 40 CFR 52.633 (reasonably attributable visibility impairment) and 74 FR 2392 (January 15, 2009)(regional haze).

The 2011 Hawaii Infrastructure SIP was not submitted to meet either of these requirements.

Therefore, this action does not trigger sanctions.

In addition, these deficiencies have previously been addressed through promulgation of a PSD federal implementation plan (FIP) (43 FR 26410, June 19, 1978, as amended at 45 FR 52741, August 7, 1980; 68 FR 11322, March 10, 2003; 68 FR 74488, December 24, 2003) and a FIP addressing RAVI (50 FR 28553, July 12, 1985, as amended at 52 FR 45137, November 24, 1987). EPA has proposed a FIP to address regional haze in Hawaii (77 FR 31692, May 29, 2012) and is required to take final action on this FIP (or fully approve a Regional Haze SIP) by September 15, 2012.³ Therefore, this disapproval does not trigger any new FIP obligations.

As explained in the NPR, this action does not address section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), or section 110(a)(2)(I), which pertains to the nonattainment planning requirements of part D of Title I of the CAA.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

³ See Consent Decree entered March 30, 2012 in *National Parks Conservation Association v. Jackson*, Case 1:11-cv-01548-ABJ (D.D.C.). We have placed a copy of the consent decree in the docket for this action.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and partial approvals/partial disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this partial approval/partial disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private

sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local

governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D and disapproves others, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60

days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2). This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 26, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for 40 CFR Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart M—Hawaii

2. Amend § 52.620, the table in paragraph (e) by adding an entry at the end of the table for Hawaii Infrastructure State Implementation Plan Revision 1997 Ozone, and 1997 and 2006 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards. The added text reads as follows:

§ 52.620 Identification of plan.

* * * * *

(e) EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures.

EPA Approved Hawaii Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
Hawaii Infrastructure State Implementation Plan Revision 1997 Ozone, and 1997 and 2006 Fine Particulate Matter (PM _{2.5}) National Ambient Air Quality Standards	Statewide	12/14/12	[Insert date of publication in the Federal Register], [Insert page number where the document begins]	Excluding all regulations included in the submission, as these <u>were already addressed in separate actions as listed in table (c) above</u> . This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(I), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2012-19301 Filed 08/08/2012 at 8:45 am; Publication Date: 08/09/2012]